

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.

In Re: Unopposed Application for
Judicial Assistance/Privacy Order

**APPLICANTS' UNOPPOSED MOTION FOR ENTRY OF
PRIVACY ACT PROTECTIVE ORDER**

The Applicants, John Hughes and Lesley Touzalin, as Co-Personal Representatives of the Estate of Garrett Daniel Hughes, respectfully request this Honorable Court's entry of an Agreed Privacy Act Protective Order and in support state as follows:

The Applicants request the entry of an Order pursuant to 5 U.S.C. § 552a(b)(11), to enable the Department of Justice to comply with the Applicants' *Touhy*¹ request for the release of testimony and reports regarding certain enhanced video surveillance footage.

The Applicants seek the requested information and reports in connection with the case of *John Hughes & Lesley Touzalin as Personal Representatives of the Estate of Garrett Hughes, v. Lloyd P. Brewer, III*, Case No. 23-CA-00264-K, pending in the Sixteenth Judicial Circuit in and for Monroe County, Florida (the "State Court Action"). This is a civil wrongful death suit arising out of a shooting incident at 3340 North Roosevelt Boulevard that resulted in the death of Garrett Daniel Hughes, the Applicants' son.

The primary investigating agency is the Key West Police Department ("KWPD"). During its investigation, KWPD requested that Special Agent Greg Ball of the Federal Bureau of Investigation assist in obtaining certain enhancements of the surveillance video that captured the shooting. Upon information and belief, Special Agent Ball received the surveillance video from

¹ *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

the KWPD and transferred it to FBI Video Communications Specialist Kimberly Shupp. Specialist Shupp subsequently prepared certain enhanced videos and certain related still images taken from such enhancements. KWPD has provided the undersigned with a copy of the videos and stills.

The undersigned has sent a letter request, deposition notice, and subpoena duces tecum to the Department of Justice pursuant to the *Touhy* regulations codified at 28 C.F.R. § 16.21, *et seq.* for reports and testimony relating to the above matters.

The Department advised that the requested evidence is protected by Privacy Act, 5 U.S.C. § 552a, *et seq.* 18 U.S.C. § 552a(b)(11) allows disclosure of protected information “pursuant to the order of a court of competent jurisdiction.” The Applicants and the Department agree that this is a court of competent jurisdiction under section 552a(b)(11).

The Department does not object to the entry of the attached Privacy Act Protective Order.

The Department does not otherwise acquiesce in, or acknowledge the validity of, the other allegations, characterizations, legal conclusions, and/or statements in the Application and reserves all its rights under applicable law, including its right to assert appropriate privileges with regard to any evidence sought by the Applicants.

CERTIFICATE OF CONFERRAL PURSUANT TO LOCAL RULE 7.1(a)(3)

Undersigned counsel conferred with Assistant U.S. Attorney Zakarij N. Laux who advised that the FBI has no objection to this motion.

WHEREFORE, the Applicants respectfully request that this Honorable Court issue a Privacy Act Protective Order pursuant to 5 U.S.C. § 552a(b)(11) directing the Department of Justice to disclose testimony and reports regarding the above matters as set forth in the attached order.

Respectfully submitted this 31st day of July 2024.

Respectfully submitted,

/s/ Manuel Arteaga-Gomez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July 2024, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing is being served this day upon counsel identified below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

/s/ Manuel Arteaga-Gomez

MANUEL ARTEAGA-GOMEZ

SERVICE LIST

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.

In Re: Unopposed Application for
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AGREED PRIVACY ACT PROTECTIVE ORDER

This cause is before the Court upon the Applicants' unopposed motion for a Privacy Act Protective Order regarding testimony and reports from Federal Bureau of Investigation ("FBI") Special Agent Greg Ball and FBI Video Communications Specialist Kimberly Shupp regarding the FBI's video enhancement work in the criminal investigation of the shooting death of Garrett Daniel Hughes on February 13, 2023, in Key West, Monroe County, Florida.

Entry of said Order is necessary to permit the FBI to expeditiously release information and reports to counsel in the matter of *John Hughes & Lesley Touzalin as Personal Representatives of the Estate of Garrett Hughes, v. Lloyd P. Brewer, III*, Case No. 23-CA-00264-K, pending in the Sixteenth Judicial Circuit in and for Monroe County, Florida (the "State Court Action"). The United States is not a party to the State Court Action.

The requested information and reports are protected under the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a. This Order is to permit use of the requested information and reports and to restrict the use of the information disclosed so as not to undermine the purpose of the Privacy Act.

The Court having considered the motion and being fully advise in the premises, and the Court having balanced the interests of the parties versus the privacy needs of the persons to whom the information pertains, *Perry v. State Farm Fire & Casualty Company*, 734 F. 2d 1441, 1447 (11th Cir. 1984), it is hereby

ORDERED AND ADJUDGED:

1. The requested information and reports are covered by the Privacy Act, 5 U.S.C. § 552a.

2. The need for disclosure outweighs the privacy needs of the persons to whom the information and reports pertain.

3. The information and reports may be disseminated and used by the parties and their counsel in the State Court Action reasonably and in good faith in the preparation of and litigation of the State Court Action. This includes the public disclosure of testimony and related exhibits as reasonably required for pre-trial litigation and trial in the State Court Action. However, the above information and reports shall not be disseminated or used by any party or counsel, or any other person to whom disclosure is made, for any other purpose without the Department of Justice's written consent.

4. Any person to whom the parties or their counsel in the State Court Action make disclosure of the above information and reports during the State Court Action, other than in-court disclosure, shall be informed of the use restriction imposed by this Order prior to the disclosure to said person and shall acknowledge his/her agreement to be bound by this Order.

5. This Order is entered pursuant to 5 U.S.C. § 552a(b)(11), is applicable solely to privacy issues, and does not prejudice the rights of the parties to raise objections to the admissibility of any evidence or to assert any applicable privilege.

DONE AND ORDERED in chambers, this ____ day of _____, 2024.

United States District Judge